footway of the width of at least seven feet....." the extended meaning to the word "erect," given to it by section 144 (10). Had the by-law been made under section 144, or if the extended meaning given to the word "erect" in section 144 (10) had been included in the Interpretation section of the Municipal Ordinance, (section 3), I should agree; but as it was not, I have no reason for giving the word "erect" a meaning other than its ordinary meaning, viz. to put up a new building. It is significant that at the end of the by-law it is stated "The expression 'street' shall have the same meaning as that expression has in Ordinance No. 135 (Municipal)." Nothing would have been easier, had this been the intention, than to say that the expression "erect" has the meaning assigned to it by section 144 (10).

As it stands, By-law 121 is perfectly reasonable in the case of new buildings; but, as pointed out by Mr. Walters for the appellants, if the word "erect" had the extended meaning given to it in section 144 (10) it would lead to hardship and infringement of the rights of property owners.

I do not consider it necessary to deal with the history of the Municipal Ordinance or of the building by-laws, on which so much time was taken in the hearing of this appeal. Our duty is to interpret the law as in stands.

As to whether there was power in the Commissioners to make By-law 121 under section 143 (1) (m); in view of my finding, I do not consider it necessary to decide this point, but the words "*Construction* and levels of arcades" mentioned in (m) seem to me (coupled with the wide powers given to the Commissioners under the Ordinance) sufficient to justify the making of By-law 121. In the case of a new building, the construction of arcades is so general in Singapore, and is to the advantage of the building owner—if he does not put an arcade, he would have to set back the whole building (instead of only the ground-floor) to allow for a footpath—that the question is of little importance.

In my opinion, the appeal should be allowed with costs, here and in the court below and the Writ of Mandamus should issue directing the Municipal Commissioners to consider the plans as set out in the order of the High Court dated 16th November 1936, the relators agreeing that the sunshades shown on the plans shall be omitted. Deposit to be repaid to appellants' Solicitor.

Appeal allowed.

Solicitors for the Appellants—

Allen & Gledhill.

Solicitors for the Respondents—

Drew & Napier.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

August 16, 1937.

RE PAT A. BEINS.

[SINGAPORE BANKRUPTCY No. 275 of 1929].

Bankruptcy—application for discharge—certificate of number of creditors—delay in issue of—Official Assignee's report—delay in filing of—supplementary reports filed without leave of Court—investigation by Official Assignee of bankrupt's affairs—questions put by Official Assignee at his Office—scope of—public examination—necessity of re-opening—Bankruptcy Ordinance (Cap. 45) Ss. 17, 33, 69(2), 70; Bankruptcy Rules 194, 196, 272, 288; Courts Ordinance (Cap. 10) s.36; Evidence Ordinance (Cap. 13), s.3; Oaths Ordinance (Cap. 15), Ss.3, 4.

When a bankrupt, desirous of applying to the Court for his discharge, applies for a Certificate as to the number of his creditors under Rule 194 of the Bankruptcy Rules, to the Official Assignee, the latter cannot withhold or delay its issue. Nor can the Official Assignee delay filing the Report on the bankrupt's conduct and affairs prescribed by sect. 33(3), Bankruptcy Ordinance (Cap. 45), beyond the time prescribed by Rule 196(2), without applying for and obtaining, under Rule 288, an extension of time for doing so. Nor, finally, can the Official Assignee file, of his own initiative, further or "supplementary" Reports without similarly obtaining the leave of the Court.

The Official Assignee is not a judicial, but an executive, officer. He cannot administer oaths except for taking affidavits in verification of certain documents specified in sect. 69(2) of the Ordinance, and he cannot, like a Court, take the evidence of the bankrupt or cross-examine him within the precincts of the Bankruptcy Office, for the purpose of subsequently incorporating his answers in the Report to the Court required by sect. 33 (3) of the Ordinance. The Official Assignee may indeed question the bankrupt, without administering an oath, and the information so obtained or answers thus given, when read over, interpreted to. and signed by, the bankrupt, may be used as a basis for his Public Examination in Court under the supervision of the Judge, under sect. 17 of the Ordinance. Such Public Examination (if already closed when the new material comes to light which is sought to be availed of at the hearing of the application for discharge) must be formally re-opened for the purpose, under section 17(9) of the Ordinance.

A debtor, who was adjudicated bankrupt in July 1929, having informed the Official Assignee in 1936 that he wished to be discharged. was called upon to pay, $22 for "the expenses of his intended application for discharge." This sum having been duly paid on the 24th March 1936, the Official Assignee did not issue to the bankrupt the Certificate as to the number of his creditors prescribed by Rule 194, but entered him as No. 63 on a "waiting-list" of intending applicants for discharge. On the 13th May 1937. the bankrupt. through a Solicitor, formally renewed his request for the aforesaid Certificate: he was instead called upon to attend at the Bankruptcy Office, and was there sworn in, and cross-examined by the Assistant Official Assignee as to his conduct and affairs. The Certificate abovementioned was then issued on the 26th May 1937, after the conclusion of such cross-examination.

Held, the Official Assignee and his Assistant had in these respects acted illegally and violated Rule 194, and sect. 17 of the Ordinance.

The Registrar of the High Court, upon production of the said Certificate, fixed the 25th June 1937, for the hearing of the bankrupt's application for discharge. The

Official Assignee's Report, required by sect. 33(3) of the Ordinance, which should, therefore, by Rule 196(1) of the Bankruptcy Rules, have been filed by the 17th June 1937 was, in fact, dated the 18th, and filed on the 21st, June 1937, without any extension of time being applied for or obtained. The bankrupt's Solicitor, having in consequence of the delay in the Report, obtained an adjournment of the hearing of the application to the 9th July 1937, the Assistant Official Assignee in the interval, filed two "supplementary Reports" on the 6th and 8th July 1937 without the leave of the Court.

Held, the Official Assignee had acted illegally and violated Rules 196(1) and 288.

APPLICATION by the bankrupt for his discharge.

The bankrupt, Patrick Alexander Beins, who had in 1923 commenced business in Singapore as commission agent and manufacturers' representative, converted the business at first, in May 1924 into a private Company, called "P.A. Beins, Ltd.," and then in April 1928, into a public Company bearing the same latter name.

On the 17th April 1929, an important creditor (Netherlands Gutter Percha Company) recovered judgment for $11,289.81 against the Company, and seized by way of execution its stock, realising upon sale on the 22nd May 1929, $10,145.18.

Thereupon, on the 19th April 1929, the Company passed a resolution for its voluntary winding-up, which was followed on the 10th June 1929, by an Order upon a creditor's petition, for a winding-up by the Court.

A creditor then recovered judgment on the 14th June 1929 against the bankrupt personally for $3,821.94, and filed a Petition in Bankruptcy against him on which on the 5th July 1929, Receiving and Adjudication Orders were made. Receiving and Adjudication Orders were similarly made against his wife on the 12th July 1929.

The bankrupt's Statement of Affairs, filed on the 18th September 1929 disclosed (List A) 15 unsecured, (List C) 7 partly-secured, creditors and 19 other creditors (List D) whom he considered such by reason of certain conditional guarantees that he gave them for the liabilities of "P.A. Beins Ltd.," when on the verge of liquidation. There were thus 41 creditors in number, and the liabilities were shown by the Statement of Affairs to total $78,725.51. Proofs had been lodged by 27 creditors for a total of $70,331.35 and they had been admitted to rank for dividend for $65,552.69. On the 19th September 1929, on the application of the Official Assignee, an Order had been made for the administration of the bankrupt's estate under sect. 104 of the Bankruptcy Ordinance in a summary manner.

The Public Examination of the bankrupt was held on the 28th February 1930 and closed the same day.

A dividend of 4.24% had been declared and paid on the bankrupt's estate.

Upon the revival of trade after the prolonged slump conditions, the bankrupt attended at the Bankruptcy Office on various occasions from and after September 1935, and eventually on the 24th March 1936, on the demand of the Official Assignee, paid him the sum of $22 for the "expenses of his intended application for discharge." Having heard nothing further from the Official Assignee, the bankrupt on the 13th May 1937 applied formally through a Solicitor for the Certificate prescribed by Rule 194 of the Bankruptcy Rules as to the number of his creditors. In reply, the Solicitor was requested on the 14th May 1937 to "instruct the bankrupt to call at the Bankruptcy Office," which having been done, the Bankrupt was there and then formally sworn, and subjected by the Assistant Official Assignee to a long and searching *viva voce* examination extending over several days. The bankrupt's Solicitor's renewed applications, dated the 20th and 25th May 1937, for the abovementioned Certificate were, in the meantime, not complied with. In fact the Certificate was not issued till the Assistant Official Assignee had concluded his aforesaid examination of the bankrupt, namely, on the 26th May 1937. It certified (in Form 58, annexed to the Bankruptcy Rules) that "the creditors who pursuant to sect. 33(8) of the Bankruptcy Ordinance, and Rule 194, required to be notified of the bankrupt's application for discharge were 41 in number" (being the total of the three Lists, A, C and D, abovementioned).

This Certificate being filed in the High Court together with the Bankrupt's affidavit of his reasons for applying for his discharge, the Registrar fixed the 25th June 1937 as the date for the hearing of the application.

The Official Assignee's Report to the Court upon the Bankrupt's conduct and affairs under sect. 33(3) of the Ordinance, which should, in conformity with Rule 196(1) of the Bankruptcy Rules, have been filed not later than the 17th June 1937, was not really filed till the 21st June 1937 (it was dated the 18th June 1937), without any extension of time for doing so having been obtained or even applied for. Paragraphs 31, 32, 34 and 35 of the Report were as follows:—

> "31. There is no evidence of any offence under the Bankruptcy Ordinance under sects. 421, 422, 423 and 424 of the Penal Code, except as hereinafter appearing.
>
> "32. It is submitted that there is proof of the following 'fact' under sect. 33(6) (c), which is also an offence punishable under sect. 114(e), of the Bankruptcy Ordinance.
>
> "That the bankrupt contracted the following debts provable in the bankruptcy without having, at the time of contracting

them, any reasonable ground of expectation of being able to pay them:—

"Name of Creditor	Amount of debt.	Date when contracted.
(1) A.R.A.M. Ramanathan Chettiar	$1,250.00	March 1929.
(2) Sim Seck Joo ..	120.00	April 1929.
(3) Lim Soon Teng	185.00	11th April 1929.
(4) S.P.K.A. Ramanathan Chettiar	400.00	22nd April 1929.
	$1,955.00	

"34. It is submitted that there is proof of the following 'fact' under sect. 33(6) (j) of the Bankruptcy Ordinance.—

That the bankrupt's assets are not of a value equal to 50% on the amount of his unsecured liabilities.

"35. The conduct of the bankrupt has not been satisfactory.

"The undermentioned debts appearing in the bankrupt's Statement of Affairs were secured by Promissory Notes executed in the joint names of the bankrupt, his first wife (Lydia Beins), and the Company, execution by the Company being under the signature of the bankrupt as Managing Director of the Company. They do not appear in the Company's Statement of Affairs, and are believed not to have passed through the Company's books. The bankrupt has admitted to me that the moneys were taken by him for his personal use, and alleges that the effect of the said execution by the Company was to make the Company guarantor of the said debts. The bankrupt has, however, also stated that he used the moneys for the Company's purposes, but he has adduced no evidence of this.—

"Name of Creditor	Amount.	Date when contracted.
(1) A.R.M.A. Annamalay Chetty	$4,500.00	10th March 1928.
(2) R.M.V.S. Vallayappa Chetty	600.00	24th July 1928.
	600.00	1st Aug. 1928.
(3) S.P.K.A. Ramanathan Chettiar	3,000.00	16th Feb. 1929.
	4,000.00	22nd Mar. 1929."

In view of the Report being filed late, the bankrupt's Solicitor applied to the Court for, and was granted, an adjournment of the hearing of the application till the 9th July 1937: and gave notice, under Rule 196(2), to the Official Assignee on the 5th July 1937 of his intention to dispute certain paragraphs of the Report, and to object to the admissibility in evidence of certain others. The Official Assignee thereupon filed two more Reports—one, dated the 5th, and filed on the 6th, July, entitled a "Supplementary Report," and another on the 8th July, entitled a "Further Supplementary Report." The leave of the Court had not been obtained, nor the time for filing them extended or abridged, in respect of either of these "Supplementary Reports."

The bankrupt's application for hearing eventually came on for hearing on the 14th July 1937.

Ambrose, Assistant Official Assignee, read his Report of the 21st June, and (*de Mello*, Counsel for the bankrupt, objecting) also the two "Supplementary Reports" of the 6th and 8th July 1937; and submitted that the Court should refuse absolutely the bankrupt's discharge.

de Mello, for the bankrupt.—(1) The two "Supplementary Reports" are not admissible in evidence, as they have been filed without the leave of the Court. The last Report (8th July 1937), has not even been filed 7 "clear" days before today. "Not less than seven days before the time fixed for hearing" in Rule 196(1) means "seven clear days;" *Railway Sleepers Supply Co.*, (1885) 29 Ch. D. 204. Even the first Report (dated 18th, but filed the 21st, June) is irregular and inadmissible, the date originally fixed for the hearing of the bankrupt's application being the 25th June. The Official Assignee or his Assistant should have applied for an extension of time to file the First Report, and an abridgment of time to file the others, under Rule 288. He has not done either. My Notice dated 5th July 1937 under Rule 196(2), disputing the Official Assignee's statements relates only to the statements of the First Report, and to those of the Supplementary Reports. These are, moreover, immaterial, and may be ignored. (2) As to the substance of the imputations against the bankrupt. Paragraph 32 of the Report refers to sect. 33(6) (c) of the Ordinance, and enumerates 4 debts aggregating $1,955. contracted in March and April 1929. By reason of their dates, situated so near to the execution levied against the Company and the resolution for its voluntary winding-up, it is inferred that the bankrupt had contracted those debts "without having, at the time of contracting them, any reasonable ground of expectation of being able to pay them." In fact, however, he had assets and expectations which justified his contracting small loans up to $1,955 to pay his daily expenses. These assets comprised—(1) $49,000 worth of shares in "P. A. Beins Ltd."; (ii) his claim of $3,101 against P. A. Beins Ltd. (recorded in "List F," of his Statement of Affairs; (iii) $2,735 "other assets" (recorded in List G), which ultimately in fact realised $3,405.35, as admitted in paragraph 30 of the Official Assignee's Report of the 21st June 1937; and (iv) he was, at the time of the failure of the Company, negotiating with Messrs.

Dupire Bros. for a situation, which, as appears by his Public Examination, actually materialised as from the 1st May 1929. The *onus* of disproof cast by sect. 33(6) (c) upon the bankrupt is, moreover, sufficiently discharged by reference to the well-established decisions on the analogous section in England, dating as far back as 1865-1867. In *re Baillie and Harrison*, (1866), 2 Ch. App. 195, it was held that the overdrawing of an account at a bank did not come within the language of the section. It is submitted that a person, circumstanced as the bankrupt was in March-April 1929, contracting a debt of less than $2,000 for the daily necessities of himself and his wife does really no more than overdraw his account at the bank. Again, in *re Caldwell* (1867), 3 Ch. App. 28, it was held that a bankrupt does not offend against the section, whose debts *in the aggregate* are more than he could be reasonably expected to pay: and in *re Ainsworth*, (1867) 3 Ch. App. 246, that a manufacturer buying goods on credit to a reasonable amount, even though he is insolvent at the time, does not come within the purview of the section. Lastly, no reference was made in the bankrupt's Public Examination of the 28th February 1930 to the debts which are the subject of para. 32 of the Report. He would have been much better able to give an explanation in 1930 than now, in 1937. (3) As to paragraphs 30 and 34 of the Report, it is true that only a dividend of 4.24% has been paid from the bankrupt's estate, but his bankruptcy was the effect of the slump, and a dividend of 3.655% has been paid from his wife's estate (Bankruptcy 276 of 1929), and of 3.10% in the winding-up of "P. A. Beins, Ltd.," making nearly 11% in all, in respect of what were really connected failures. Since the slump, moreover, it has not been customary for the Court to attach too much weight to the 50% dividend, in section 33(c) (j), as a condition *sine qua non* for a bankrupt's discharge. (4) Paragraph 35 of the Report is inadmissible in evidence. It is founded, not on the Public Examination, but on the result of a cross-examination to which the Assistant Official Assignee subjected the bankrupt between the date (13th May 1937) of my application for a Certificate of the number of Creditors, and his issue of it (26th May 1937). The Official Assignee and his Assistant have no power to take evidence, and their powers to administer oaths are restricted to affidavits verifying certain specified documents: sect. 69(2), Bankruptcy Ordinance. He is not a "Commissioner for Oaths" under sect. 36, Courts Ordinance (cap. 10), nor an officer empowered under sects. 3 & 4, Oaths Ordinance (Cap. 15), or under sect. 3, Evidence Ordinance (Cap. 13), to take evidence. Though purely an executive officer, he has, in this case, chosen to constitute himself a judicial officer and. as such, obtained statements from the bankrupt which he calls "admissions." If he wished to call the bankrupt to account for facts not alluded to in his Public Examination of February 1930, he could have applied to the Court to re-open the Public Examination, the procedure for which is simplicity itself (Rule 272, and Form 106). He is not justified in alleging that the bankrupt "has adduced no evidence" after the lapse of 8 years, when he (the Assistant Official Assignee) has not taken the right course for enabling the bankrupt to adduce such evidence, if any, viz. by re-opening the Public Examination and examining the debtor in the presence of a Judge. This Court, and not the Bankruptcy Office, is the place for the bankrupt to adduce evidence. Section 17 not having been complied with, the allegations made in paragraph 35 of the Report must be rejected. In June 1935, a similar contention was advanced on behalf of a bankrupt, *S. Muthukumaru*,* (Bcy. 793 of 1932)., in connection with a motion under sect. 114 for his committal for not keeping certain account-books, which motion was supported by an affidavit exhibiting the bankrupt's Answers to a series of Interrogatories administered to him by the Official Assignee and the Petitioning Creditor's Solicitor at the Bankruptcy Office: and your Lordship accepted the contention, and ruled that the Official Assignee had violated both the letter and spirit of sect. 17, and ordered that the Interrogatories and the answers thereto be expunged from the affidavit. The aim and scope of the Public Examination is to bring out facts enabling the Court to consider the merits of the bankrupt's application for his discharge, when he makes it. Section 33(1), by making the conclusion of the bankrupt's Public Examination a pre-requisite of the hearing by the Court of his application for discharge, implies that the Report to the Court, subsequently mentioned in sect. 33(3), is to be founded principally, if not entirely, upon the Registrar's Notes of that Public Examination: see also sect. 70(c) of the Ordinance, and *re Atkinson*, (1912) 2 K.B.251: *re Paget*, (1927) 2 Ch. 85: *re Jawett*, (1929) 1 Ch. 108. No question was directed in the Public Examination to the matters imputed to the bankrupt in paragraph 34 of the Report.

Finally, in view of the enormous delay and suspense endured by the bankrupt, and the opportunities he has lost for earning a decent livelihood, it is submitted that he is entitled to an unreserved and immediate discharge.

Ambrose in reply.—The issue of the Certificate as to the number of creditors was delayed, but the delay was unavoidable as the office was short-handed in 1936. The bankrupt's application for a Certificate was 63rd in a list containin 83 such applications. The certificates are now being issued more promptly. As to the alleged "cross-examination" of the bankrupt, there was

*Unreported: see, however, *Straits Times* Newspaper of 15th June 1935.

no compulsion: he volunteered the information, and did not object to answer.

(Ag. CHIEF JUSTICE.—Can it be called "volunteered information" when you extracted it by a series of questions, after swearing him in?).

Time has not permitted of the Public Examination of the bankrupt being reopened.

TERRELL, AG. C. J.—This is an application for discharge, and is opposed by the Official Assignee. The material facts are as follows. Receiving and adjudication orders were made on the 12th July 1929. Proofs were lodged by 27 creditors for $70,331.35 and admitted to rank for dividend to the amount of $65,552.69. Assets, including instalments payable under an Order of the 12th August 1932, amounted to $3,405.35, and a sum of rather less than 5% of the liabilities has been or will be distributed by way of dividend.

In March 1936, the bankrupt approached the Official Assignee verbally with a view to applying for his discharge, and paid a deposit for the purpose of defraying the expenses of notifying the creditors. Nothing, however, happened for over a year, the explanation of the Assistant Official Assignee being that there were 83 applications for discharge on the files, and that, owing to the congestion in the Bankruptcy Office, it took more than a year for the bankrupt's application to be reached.

In May 1937, the bankrupt consulted Mr. de Mello, and he eventually succeeded in setting the machinery of the Bankruptcy Office in motion. On the 14th May 1937, the bankrupt was called to the Bankruptcy Office and examined, after having been first sworn. The results of such examination are incorporated in the Official Assignee's Report, which is dated the 18th June 1937. In the meantime, the usual notice, dated the 2nd June 1937, was sent to the creditors advising them that the bankrupt's application for discharge would be heard on June 25th 1937. Under Rule 196, the Report has to be filed not less than 7 days before the time fixed for hearing the application, but although the Report is dated the 18th June 1937, it was not filed until the 21st June 1937.

Accordingly, when the application came on, Mr. de Mello applied for and obtained a fortnight's postponement, to the 9th July 1937. Before the adjourned date of hearing, the Official Assignee filed two Supplementary Reports, dated the 5th and 8th days of July 1937. These were obviously not filed in time even for the adjourned hearing, but, as Mr. de Mello was anxious that the application should be proceeded with, he waived his objections.

I would point out that there is power, under Rule 288, for the Court to abridge the time appointed by the Rules for doing any act, but no such application was ever made. I consider it to be the duty of the Official Assignee to see that the officials in his department strictly comply with the Rules.

At the hearing of the application for discharge Mr. de Mello has objected to certain passages in the Reports, having given notice of his objections in compliance with Rule 196(2). Mr. de Mello's chief objections are concerned with statements alleged to have been made by the bankrupt when he was examined by the Official Assignee on the 14th May 1937. I think that these objections are well founded. It is certainly the duty of the Official Assignee, under section 70(a) of the Bankruptcy Ordinance, to investigate the conduct of the debtor, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under the Ordinance etc; and under section 33(3), the Court shall take into consideration a report of the Official Assignee as to the bankrupt's conduct and affairs, including a report as to the bankrupt's conduct during the proceedings under his bankruptcy. It is, however, abundantly clear from section 17 of the Ordinance that the statutory investigation of the bankrupt's affairs is to take place in open Court by means of a Public Examination.

Section 17(1) reads as follows:—

> "17(1). Where the Court makes a receiving order, it shall hold a public sitting on a day to be appointed by the Court for the examination of the debtor, and the debtor shall attend thereat, and shall be examined before a Judge in open Court as to his conduct, dealings and property."

Section 17(5) provides:

> "The Official Assignee shall take part in the examination of the debtor."

Subsection (6) reads:

> "The Court may put such questions to the debtor as it thinks expedient."

Subsection (7) reads:

> "The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court puts or allows to be put to him."

Subsection (8) reads:

> "Such notes of the examination as the Court thinks proper shall be taken down in writing by the Registrar or Deputy Registrar and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor at all reasonable times,"

and, by virtue of subsection (9), after the public examination has been concluded, it may be reopened whenever the Court sees fit to do so.

It is, I think, obvious from these provisions that the inquiry into the debtor's affairs shall be strictly under the control of the Court, and the Official Assignee's Report, so far as concerns the debtor's affairs (apart from his conduct during the bankruptcy), should be based on the debtor's statement of affairs and his public examination. That does not mean that it is not open to the Official Assignee to question the debtor about his affairs. It is very desirable that he should have power to do so, otherwise the public examination might be uselessly prolonged. In certain circumstances, where fresh evidence has come into the hands of the Official Assignee since the conclusion of the Public Examination, it may also be necessary for the Official Assignee to further examine the debtor with a view to asking the Court to reopen the Public Examination or to examine him in open Court under section 31. But it is a very different thing when the Official Assignee treats a private examination within the precincts of the Bankruptcy Office as the equivalent of the statutory examination of the debtor in open Court, and attempts to use any answers which he may have extracted for the purpose of criticising the bankrupt's conduct prior to his bankruptcy.

The undesirability of this procedure is emphasized by the facts of the present case. The bankrupt was asked in May 1937 about the details of a very complicated bankruptcy, which was bound up with the liquidation of the company "P. A. Beins. Ltd." in 1929, when he had not had access to his papers or books for 7 or 8 years. In these circumstances, his answers, however honestly given, were not likely to be of any value whatever: nevertheless, they have been made the basis of adverse comments by the Official Assignee who has relied on them to ask the Court to refuse the application for discharge altogether.

Although, as I have said, there is no objection to the Official Assignee questioning the bankrupt at any stage of the proceedings, I can find no authority for the present practice under which, as I understand, the bankrupt is put on oath, and is frequently required to swear an affidavit. I see no objection to the bankrupt's statements being recorded in writing, or even to their being signed by him, provided that they are read over and interpreted to him, and such statements may be useful as a basis of the examination in open Court, and possibly for impugnin statements there made on oath. But such statements should never be incorporated, as such, in the Official Assignee's report. In the present case, I had no hesitation in treating such statements as inadmissible.

As, in the opinion of the Court, the "facts" aimed at by subsections (c) and (j) of section 33 (6) of the ordinance, and referred to in paragraphs 32 and 34 of the Official Assignee's Report have been proved which prevented the bankrupt from being granted an order for immediate discharge, the discharge was ordered to be suspended for three months. In suspending the discharge for three months only, the Court took into consideration the very long period which elapsed before the bankrupt's application was attended to.

Discharge granted subject to suspension for 3 months.

Solicitor for the bankrupt—*A. de Mello.*

[REVISIONAL CRIMINAL JURISDICTION]

TERRELL, AG. C.J.

July 17, 1937.

REX v. TAN AH YEO

[SINGAPORE MAGISTRATE'S CASE No. 661 of 1937]

Nuisance—abatement—nuisance notice—legality of—closing order—Municipal Ordinance (Cap. 133), Ss. 244—249.

The Municipal Commissioners served a nuisance notice upon the owner of a certain attap premises alleged to have been " of such a construction and in such a state of repair as to be injurious to health." The notice called upon the owner within 30 days from the service thereof to abate the same " and for that purpose to demolish the above hut and the insanitary plant and attap dwelling to the south of it."

Held, on revision by the High Court, that the notice is *ultra vires* inasmuch as by it the Commissioners sought to obtain the result which can only be reached after an application to a Police Court under Section 247 of the Municipal Ordinance and inasmuch as it purports to require demolition which can only be directed by a Police Court upon a second complaint under Section 248 of the Ordinance when a closing order has not been complied with.

CRIMINAL REVISION.

A nuisance notice issued by the Municipal Commissioners, purporting to act under section 246 of the Municipal Ordinance, was served upon the accused requiring him to abate a nuisance (to wit, premises of such a construction and in such a state of repair as to be injurious to health) and to demolish the abovementioned hut within 30 days. The accused having failed to comply with the notice, a summons was issued to him and a closing order was made at the hearing by the Magistrate. Thereafter, at the instance of the Magistrate, the record was called for by the High Court under the provisions of Section 320 (1) of the Criminal Procedure Code.

In the Court below, Dr. C. H. Withers Payne appeared for the Municipal Commissioners and Mr. Aubrey V. L. Davies for the accused. Neither counsel appeared on the revision by the High Court. On the 17th July 1937 Mr. Justice A. K. a'Beckett Terrell, Acting Chief Justice, made an order setting aside the closing order. His Lordship gave the following grounds of revision:—

TERRELL, AG. C.J.—In this case a closing order was made upon the owner of a certain attap premises known as No. 137-1 Boon Keng Road, Singapore.

The record was called for by the High Court under the provisions of section 320(1) of the Criminal Procedure Code, and the closing order